M E M O R A N D U M

TO: Joseph T. Deters

FROM: Bill Breyer

DATE: September 13, 2013

RE: Backdating entries of final appealable orders in Juvenile Court

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We have had problems in the past getting timely notice of the filing of final appealable orders from Judge Tracie Hunter's courtroom. As a result, we have tried to make periodic checks of the docket in cases where we believe we have a meritorious appeal. During this process we have recently identified two cases in which it appears appealable orders have been backdated.

(1.) ***In re: A.C*** . (No. /12/11408; State's Appeal Nos. C-130416, C-130464 & C-130467, consolidated into C-130416) – This case is one in which we filed a motion for leave to appeal a discovery order on July 5, 2013, and also obtained an emergency stay of the discovery order on July 5, 2013 from the Court of Appeals.

On July 23, 2013, this case was again before Judge Hunter. On that date, Judge Hunter orally issued an order that all state's evidence at issue in the pending motion for leave could not be introduced at trial. In effect, the Court had suppressed this evidence. Thus, the State had seven (7) days to appeal. As the seventh day (July 30, 2013) arrived, and no entry had been placed of record, the State filed a provisional notice of appeal as of right, even though no entry was of record. The State also filed a motion for leave on July 31, 2013, to protect itself, as again no entry has been filed.

Staff in our Juvenile Division repeatedly checked the docket beginning 7/23/2013, and by 8/20/2013, no entry had been journalized. The motion for leave filed with the Court of Appeals was granted 8/15/2013. On that same date, counsel for A.C. filed a motion to dismiss, claiming there was no final order of record to appeal. On August 22, 2013, _____ (prosecutor) checked the docket and an entry dated 7/23/2013, now appeared on the docket, and was entered chronologically as of that date, (*i.e.*, to anyone viewing the docket the entry would appear to actually have been entered that date. The entry just before it is dated 7/3/2013, and the entry just after is dated 8/30/2013).

We have an affidavit from PROWARE, the software provider for Juvenile Court, that Judge Hunter's entry of 7/23/2013, was computer generated on 8/22/2013, and backdated to July 22, 2013. The way the Juvenile Court system functions requires that in order to get the entry at issue to appear chronologically, as in this case, required a deliberate act of backdating through use of a date override function on the Juvenile Court's IT system.

(2.) ***In re: Q.O.*** (No. /12/012095; State's Appeal No. C-130548) – Q.O. was charged with Carrying Concealed Weapon (CCW) in December 2012. On January 11, 2013, Q.O.'s motion to suppress was denied and he was found guilty of CCW by a magistrate.

Objections to the magistrate's ruling were filed, and on March 5, 2013, Judge Hunter heard the objections and continued the case for decision. On April 22, 2013, and July 22, 2013, Judge Hunter again continued the matter for decision. (The juvenile violated his EMU three-times during this period.)

Staff members in our Juvenile Division continued to periodically check the docket for a decision as time wore on. On 8/23/2013, prosecutors were served with an entry dated 8/12/2013. This entry granted Q.O.'s motion to suppress and dismiss the CCW charges. Attached hereto is an affidavit from Juvenile Court I.T. provider PROWARE stating that the entry dated 8/12/2013, and appearing chronologically on the docket at that date was actually generated on 8/19/2013 at 5:52 P.M. As mentioned earlier, the backdating required the use of the override system. Thus, this seems to be a conscious act of deception. This backdating was done in a manner that could impact the State's ability to appeal by preventing the State from complying with the seven-day time requirement for appealing a motion to suppress. In fact, the State's subsequent Notice of Appeal contains an explanation and affidavit to explain the timing issues.

Of further interest is the fact that on August 13, 2013, an actual hearing was held before Judge Hunter in a related Q.O. case (Violation of Court Order, Juv. No. /13/005810, transcript attached). The hearing involved a motion to release Q.O. from custody pending the outcome of his case(s). Judge Hunter made no mention of her supposed "ruling" of 8/12/2013 granting the motion to suppress, and dismissing the underlying CCW charge. Instead, she declined to release the juvenile and remanded him to 20/20. This emphasizes the undeniable fact that the entry of 8/12/2013 was backdated. Further, it appears the juvenile was incarcerated at least a week past the supposed entry of dismissal, perhaps due to pending VCO charges arising from the dismissed case.

One final point - we have a copy of an audiotape message left by Judge Hunter's staff on defense attorney Ravert J. "Jay" Clark's voicemail regarding his case, *In re: I.D.* In it the caller attempts to deceive Mr. Clark about the date the call was made. The answering machine "time called" function exposes this act of dishonesty.